

MEMORANDUM

TO: Board of Environmental Protection

FROM: Judy Gates & Don Witherill, Bureau of Land & Water Quality, Augusta

DATE: July 1, 2004

RE: Chapter 500, Stormwater Management, and Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams: Post to Hearing

Statutory and Regulatory Reference: The applicable regulatory framework for this rule is the Stormwater Management Law (Stormwater Law) 38 M.R.S.A. § 420-D.

Scope: This rule applies to (A) a project that requires a stormwater permit pursuant to 38 M.R.S.A. § 420-D, (B) a development that may substantially affect the environment and requires a site location of development (Site Law) permit pursuant to 38 M.R.S.A. §§ 481 - 490 and (C) certain projects that may be eligible for license by rule for the infiltration of stormwater pursuant to 38 M.R.S.A. § 413.

Description: The department requests permission to post to public hearing Chapter 500, Stormwater Management, and Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams. Chapter 500 will be a repeal and replace of the existing chapter; Chapter 502 will be a revision of the existing chapter. No other revisions have occurred to these chapters since they became effective on December 31, 1997.

Background: The Stormwater Law includes requirements that the department develop lists of watersheds of waterbodies most at risk from new development, and sensitive and threatened regions or watersheds. This law also specifies that the department adopt rules specifying quantity and quality standards for stormwater treatment that apply in those watersheds. Lists of lakes, coastal waters, and rivers and streams with public water supplies were adopted in Chapter 502, but other rivers and streams were not listed due to a lack of data. Quantity and quality standards were adopted in Chapter 500. Standards applying to a project vary according to whether it is located within a most at risk or sensitive and threatened watershed, and according to the amount of impervious or disturbed area created. By 2002, the department had sufficient data to begin rulemaking to add to the list of rivers and streams most at risk, but in the meantime, a number of other issues had been identified with respect to the stormwater program.

In 2003, the department introduced a bill to the Maine Legislature, which led to a mandate that the department report back to the Legislature by February 2004 with recommendations for improving stormwater management in Maine. The mandate required the department to consult with state and federal agencies and representatives of interested stakeholder groups. A stakeholder group was convened in May 2003, and met monthly thereafter through May 2004. The group included engineers, municipal officials, other state agencies, and professionals representing entities with a vested interest in stormwater management. A list of stakeholders is labeled Appendix 1 and included as part of this Board packet.

To help guide the development of recommendations, the following guiding principles were agreed to by the group:

1. Stormwater standards should result in meaningful protection. They should accomplish protection without unnecessary requirements; they should be achievable, cost-effective, and based on good science;

2. Stormwater standards should not foster an unintended consequence of sprawl, as defined by state policy;
3. Stormwater standards should be understandable. They should be comprehensible and written in plain English. They should not be unnecessarily complex;
4. Stormwater standards should not conflict with other major environmental initiatives.

These guiding principles highlight several of the major issues that had become apparent over six years of administering the stormwater program. With the guiding principles in mind, the proposed revisions to the existing chapters have been developed with extensive input from the stakeholders group

Overview: The changes proposed include the following.

1. Quantity and quality standards in Chapter 500 have been revised to provide more effective and meaningful protection.
 - A. Quantity and quality standards have been streamlined into one set of standards based primarily on the protection of water quality. The department has found through years of study that some of the most significant water quality problems are not solely from end-of-pipe discharges, but from the cumulative effect of a number of activities, including development. Pollutants from these activities are often conveyed to lakes, rivers, streams, and coastal waters via stormwater runoff. Soil is one of the most common pollutants conveyed in stormwater. Under the current Chapter 500, erosion and sedimentation controls are not part of the required submissions on the large number of projects required to meet only the quantity standards. Under the proposed Chapter 500, all projects disturbing one acre or more would be required to provide erosion and sedimentation controls and maintain those controls to prevent impacts to water quality;
 - B. The treatment best management practices provide more benefit for smaller projects (i.e. those having less than 3 acres of impervious area) than the existing rule, and although the target benefit is stormwater quality treatment, the BMPs also provide some measure of quantity treatment by filtering runoff through soil;
 - C. Allowances for variability based on the type of project or treatment measure is built into the rule, with exceptions created for projects such as linear projects that may not have concentrated stormwater impacts.
 - D. Options are provided where on-site stormwater treatment is not feasible, such as compensation fees or mitigation;
 - E. Revised standards eliminate the need for engineers to model stormwater runoff from sites to design a treatment system;
 - F. The treatment best management practices described in the proposed Chapter 500 will usually take up less space on a site than practices designed to meet the existing quantity standards, increasing the cost-effectiveness associated with developing a site;
2. All projects subject to the Stormwater Law will be required to meet standards aimed at protecting water quality, eliminating differential regulation based on location.
 - A. Treatment will be provided in watersheds of pristine waters as well as waters in more developed watersheds. Evenly applying protection standards across the State's organized territory will eliminate the incentive to locate projects in more rural areas to avoid stormwater treatment requirements, thereby reducing the sprawl concern;
 - B. Additional treatment measures will be required for larger projects in watersheds of urban impaired streams identified in the revised Chapter 502. However the ability to use compensation fees or mitigation retains flexibility in treatment options;
 - C. Phosphorus standards have been retained to protect lake water quality. In some cases, an alternate standard can be substituted for the phosphorus standard, providing flexibility without sacrificing protection.

3. A single threshold of one acre of disturbance will eliminate multiple, and sometimes confusing, thresholds for jurisdiction.
 - A. Creating a one-acre disturbance threshold will allow consolidation of the permit application with the notice requirements of the Maine Construction General Permit (MCGP), in most cases eliminating dual permit processing requirements;
 - B. A flowchart has been developed to accompany the proposed rules, reflecting cascading standards that may apply to a particular project. This flowchart is included as part of this Board packet;
 - C. The language and organization of the rule have been changed substantially to improve understandability by both department staff and external customers ;
 - D. Stormwater permit by rule has been modified to include those projects that now require a MCGP, while limiting its use in more sensitive watersheds as is currently allowed; and
 - E. Chapter 502 has been substantially simplified. Because quality-based treatment will be provided for all projects requiring a stormwater permit designations for sensitive and threatened watersheds and most at risk streams are no longer required. Only most at risk lakes and urban impaired streams will need to be designated via Chapter 502.
4. Provisions included in Chapter 500 for water quality protection do not conflict with other environmental initiatives.
 - A. Most at risk lakes and urban impaired streams are retained to continue to provide protection for these designated resources;
 - B. Quality treatment in all watersheds will contribute a measure of protection not currently provided and forestall water quality degradation resulting from untreated stormwater runoff;
 - C. The requirement for all projects to provide erosion and sedimentation control, included with housekeeping and maintenance as part of the basic stabilization standards, is consistent with the Erosion and Sedimentation Control Law.

Department Recommendation: Improving the effectiveness of stormwater management in Maine relies largely on providing an effective and understandable regulation. Together, stakeholders and department staff have crafted a regulation that will provide increased protection for the water quality of Maine's protected natural resources, while simplifying the permit process. Therefore, the department recommends the Board post these rule amendments to public hearing on August 19, 2004.

Estimated Time of Presentation: Approximately 45 minutes.